

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Telephone Number Portability)

CC Docket No. 95-116

COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc., by counsel, file their comments in response to the Notice released in this proceeding on March 14, 1996.¹

INTRODUCTION

In its Notice of Proposed Rulemaking² the Commission sought comment on whether it should promulgate rules to ensure the development of number portability and, if so, what rules the Commission should promulgate.³ The NPRM addressed issues relating to all types of number portability, both interim and long term solutions, cost recovery, federal and state relationships, and the portability of non-geographic telephone numbers in the 900 and 500 service access codes ("SACs").⁴ The pleading cycle closed last October.

The Commission now seeks comment on "how passage of the

¹ Common Carrier Bureau, *Further Comments Telephone Number Portability CC Docket No. 95-116*, Public Notice DA 96-358 (rel. Mar. 14, 1996) ("Notice").

² *In the Matter of Telephone Number Portability*, Notice of Proposed Rulemaking, CC Docket No. 95-116, 10 FCC Rcd 12350 (1995) ("NPRM").

³ *Id.* at para. 7.

⁴ *Id.* at para. 71-75.

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Telecommunications Act of 1996 may affect the issues raised in the July Notice of Proposed Rule Making.”⁵ With respect to number portability, the Telecommunications Act of 1996⁶ provides the following framework:

- The 1996 Act clarifies the Commission’s authority for numbering administration;⁷
- The 1996 Act amends the Communications Act of 1934 by defining the term “number portability” to mean service provider portability;⁸
- The 1996 Act amends the Communications Act of 1934 by imposing upon local exchange carriers (“LECs”) the “duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission;”⁹
- The 1996 Act supersedes the restrictions of the AT&T Consent Decree and amends the Communications Act of 1934 by requiring, as part of the “competitive checklist” for Bell operating companies (“BOCs”) seeking to provide interLATA services, a BOC to provide interim telecommunications number portability through remote call forwarding (“RCF”), direct inward dialing trunks (“DID”), or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible until the date by which the Commission issues regulations pursuant to section 251 of the Act;¹⁰ and

⁵ Notice at p. 1.

⁶ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56, enacted Feb. 8, 1996 (“1996 Act”).

⁷ 1996 Act § 251(e)(1). The Act provides that neither the Act nor the amendments made by the Act shall be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments. *Id.* § 601(c)(1).

⁸ 1996 Act § 153(30).

⁹ *Id.* § 251(b)(2). The definition of LEC “does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term.” *Id.* § 153(26).

¹⁰ *Id.* § 271(c)(2)(xi). Section 251(d)(1) of the Act states “[w]ithin 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete (Continued...)

- The 1996 Act amends the Communications Act of 1934 to require that the cost of establishing number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.¹¹

The 1996 Act is silent as to the issues of location portability, service portability, the specific technologies of long term solutions, and the portability of non-geographic numbers in the 900 and 500 SACs.

In retrospect, the NPRM proactively addressed a large number of number portability issues in anticipation of the 1996 Act. The FCC is correct to recognize that that passage of the Act may have affected the issues raised in the NPRM. BellSouth believes the 1996 Act provides specific congressional guidance to the FCC in terms of how the order in this proceeding should be structured.

I. THE COMMISSION SHOULD ASSUME A LEADERSHIP ROLE IN DEVELOPING A NATIONAL LONG TERM NUMBER PORTABILITY POLICY

The Commission first recognized the importance of number portability with respect to competition in conjunction with its consideration of the North American Numbering Plan (“NANP”).¹² In early 1995 the Commission rejected as *dicta* its earlier determination that it had plenary jurisdiction over numbering issues, recognizing that state

all actions necessary to establish regulations to implement the requirements of this section.”

¹¹ *Id.* § 251 (e)(2).

¹² NPRM at 6.

regulators clearly have legitimate interests in the administration of the NANP.¹³ The legal basis for this determination was the dual regulatory system over telephone service granted by the Communications Act of 1934.¹⁴ The 1996 Act does not change the dual regulatory system over intra-state and inter-state telephone service.¹⁵ The Act does, however, provide that:

The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities any portion of such jurisdiction.¹⁶

As the Conference Committee Report explains, “New section 251(e) clarifies the Commission’s authority for numbering administration.”¹⁷ Thus, the Act represents a congressional declaration of the Commission’s exclusive occupation of the regulatory field of numbering resources. Taken in conjunction with the congressional mandate to take all actions necessary to establish regulations concerning, *inter alia*, service provider number portability, the Act affirms the Commission’s tentative conclusion that it should take a leadership role in establishing a long term national number portability policy. Where,

¹³ See *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code By Ameritech-Illinois*, (“Ameritech”), Declaratory Ruling and Order, IAD File No. 94-102, 10 FCC Rcd 4596 (1995) at para. 19, n.18.

¹⁴ *Id.* at para. 10.

¹⁵ 1996 Act Title VI, 601(c)(1); 47 U.S.C. Sec. 151.

¹⁶ 1996 Act Title VI, 601(c)(1).

¹⁷ H.R. Conf. Rep. No. 458, 104th Cong., 2nd Sess. at 122 (1996).

however, it makes sense to do so, the Commission has express congressional authority to delegate to State commissions the task of implementing number portability.¹⁸

II. THE COMMISSION SHOULD NOT INTERFERE WITH STATE IMPLEMENTATION OF INTERIM PORTABILITY SOLUTIONS

The Commission need no longer consider whether it should require service provider portability and which interim solution is appropriate. Congress has made both decisions. Both the definition of “number portability” in the Act and the Conference Agreement make clear that consumers are to retain telephone numbers *at the same location* when switching service providers.¹⁹ The Act further expresses a congressional determination that RCF, DID and their variants, with as little impairment of functioning, quality, reliability, and convenience as possible, are an appropriate interim number portability solution.²⁰ Moreover, Congress has determined that number portability is just one of several interconnection and access issues that are to be resolved locally through voluntary, negotiated agreements that are subject to review by State regulators.²¹ As the Commission is aware a large number of states have already anticipated Congress by requiring RCF and DID as interim solutions. Therefore, the Commission need no longer consider or seek comment on the costs, benefits, limitations, disadvantages, and availability of these interim measures or their effectiveness as an interim substitute for a

¹⁸ 1996 Act § 251(e)(1).

¹⁹ 1996 Act § 153(30) (emphasis added).

²⁰ Id. § 251(b).

²¹ 1996 Act § 271(c)(2)(B)(xi).

database number portability solution.²² In light of all that the Commission has to accomplish in order to implement the 1996 Act, and given the progress made to date in those states implementing RCF and DID, the Commission should delegate all matters relating to interim number portability, including cost recovery for interim solutions to the states.

III. WIRELESS PROVIDERS SHOULD NOT BE REQUIRED TO PARTICIPATE IN INTERIM PORTABILITY SOLUTIONS

The record makes clear that wireless providers should not be required to participate in number portability solutions until they compete directly with a LEC and are required to conform with the obligations imposed on LECs. While there is clear evidence of competition within the wireless market, there is no evidence that cellular service is competing or even ready to compete with wireline local exchange service at this time. This view of the record is supported by Congress's determination that LECs alone are required to provide service provider portability as part of their interconnection obligations. Wireless services are, at the present time, excluded from the definition of a LEC, and thus there is no legal basis to require such participation.²³ As such, states should not be allowed to mandate CMRS participation in number portability solutions. As long as CMRS providers are not recognized by Congress as facilities-based competitors to the

²² NPRM at para. 62.

²³ Congress has given the Commission the authority to determine that Section 332(c) commercial mobile service should be included in the definition of a LEC. 1996 Act § 153(26). However, such a finding is not possible on the record in this or any other pending proceeding.

BOCs pursuant to Section 271(c)(1)(A), CMRS providers should not be obligated with the burdens of number portability.

IV. THE COMMISSION SHOULD ESTABLISH AN INDUSTRY TASK FORCE TO RECOMMEND A LONG TERM NUMBER PORTABILITY SOLUTION.

The Commission should focus on its congressional mandate to take all actions necessary to establish regulations concerning a long term service provider portability solution.²⁴ These actions should involve the industry in establishing technical standards for a long term database solution that will accommodate the transition to eventual location and service portability functions in a competitively neutral manner. Ever since BellSouth filed its pleadings in this proceeding it has been an active participant in industry and state efforts to address long term solutions. As a result this participation, it has become clear to the company that implementing a long term number portability solution is a complex and costly mission. Although at least nine states have endorsed an LRN call model for a long term number portability solution, and no other viable model has emerged, the magnitude of additional issues that have arisen in state workshops alone clearly indicate that it is premature for the Commission to take any action beyond establishing a framework for resolving long term number portability issues.

The Commission can best do this by adopting a report and order establishing an industry work group to complete the development of a long term number portability solution and to report back to the Commission on the full range of the operational impacts

²⁴ The Commission need not mandate portability of non-geographic numbers in the 900 and 500 SACs, especially in the absence of any Congressional mandate to do so.

of long term implementation within 12 months. In order to guide the industry, as well as those states implementing interim portability, the report and order should articulate a national number portability policy through a set of principles that any long term permanent solution must fulfill. These principles, which enjoy nearly unanimous consensus based on the record in this proceeding, are:

- Existing services and features of the public switched network must not be impaired;
- Interim solutions are limited under the Act to RCF and DID or derivatives;
- CMRS providers should not be required to participate until such time as they compete directly with wireline carriers.
- All segments of the industry must be given an opportunity to participate in the development of a long term solution;
- 911 and E-911 service must not be impaired;
- Scarce NANP resources are conserved;
- Mid-term or transitional solutions are not adopted unless they are demonstrated to be a cost-effective step toward a long term solution;
- A service management system based on a location routing number call model will be an integral part of any long term solution;
- Any long term solution must be reciprocal among all involved carriers and no carrier should be unfairly disadvantaged by any permanent solution.

By establishing these principles the Commission can allow the industry to develop the technical solutions to a long term solution, the states to implement interim solutions as endorsed by Congressional mandate in the Act and free the Commission to focus on completing the 80 odd rulemakings within the time limits prescribed by Congress.

When the Commission receives the industry's report on a technical proposal for a long term solution, it should issue a further notice of proposed rulemaking seeking comment on whether the proposal should be adopted as well as on how the proposal is to be financed. In this regard, the Commission must pay special attention to Congress's mandate that the costs of number portability be borne by all carriers on a competitively neutral basis. It is only when the industry completes its work that enough detail will emerge with respect to the difficult cost recovery issues that need to be decided. Because these issues will arise in the context of a proposed national solution, it is proper for the Commission to exercise its exclusive jurisdiction over number administration to determine the appropriate cost recovery mechanism for a long term solution.

CONCLUSION

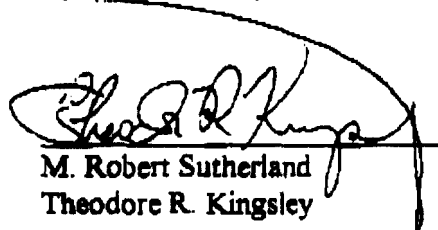
In light of the recent passage of the Telecommunications Act of 1996, the Commission should focus its efforts on taking the actions necessary to establish a framework for resolving the issues related to an efficient long term number portability solution. It should permit states to mandate only those interim solutions specifically recognized in the Act, and should excluded CMRS providers from all interim arrangements. It should adopt an Order on or before August 8, 1996 establishing broad

principles of efficiency, quality, and competitive neutrality; and direct the industry to develop a specific recommendation for a permanent solution within 12 months of the Order, which would then be subject to further public comment.

Respectfully submitted,

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BELLSOUTH TELECOMMUNICATIONS, INC.**

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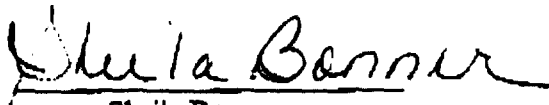
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CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of March, 1996 served all parties to this action with a copy of the foregoing COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.


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